DOCUMENT RESUME

ED 174 372 RC 011 517

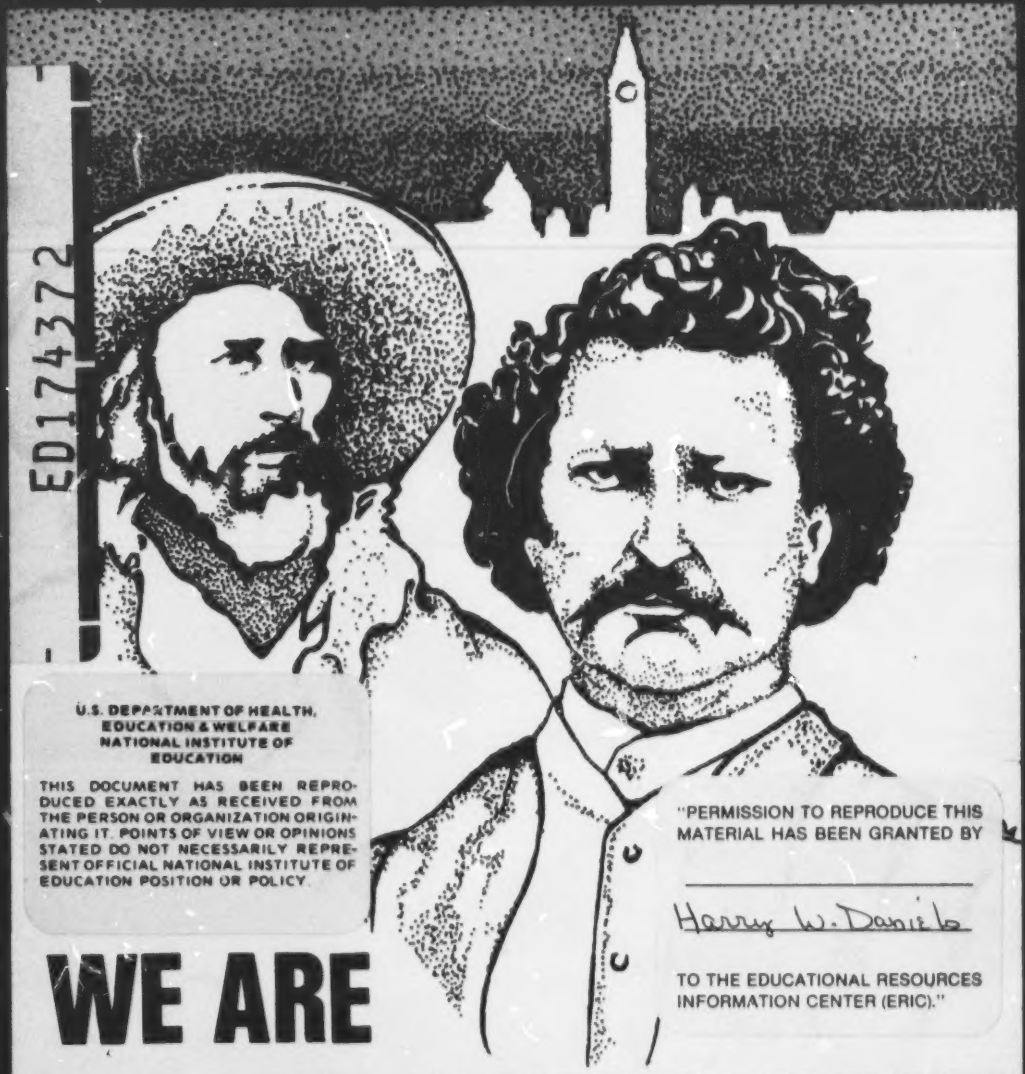
AUTHOR	Daniels, Harry W.
TITLE	We Are the New Nation (Nous Sommes La Nouvelle Nation). The Metis and National Native Policy.
INSTITUTION	Native Council of Canada, Ottawa (Ontario).
PUB DATE	Mar 79
NOTE	59p.
EDRS PRICE	MF01/PC03 Plus Postage.
DESCRIPTORS	American Indians; *Canada Natives; *Civil Rights; Cultural Pluralism; *Federal Government; *Federal Indian Relationship; Government Role; *Land Settlement; *Policy; Racial Integration; Tribal Sovereignty; Tribes
IDENTIFIERS	*Metis (People)

ABSTRACT

A compilation of six policy statements, the booklet is intended to draw attention to the suppression of the rights of indigenous peoples (specifically, the Canadian Metis) by an inflexible federalist system of government, misguided national policies, and land claim settlements such as the 1978 COPE settlement. It is also intended to propose constructive alternatives to the destruction of Canadian native "collectivities". The documents include previously issued position papers, parliamentary and conference presentations, and responses to the COPE settlements, all of which formed the basis of 1978 discussions between the Canadian government and the Native Council of Canada (NCC), representing nearly one million Metis and Non-Status Indians. Written by Harry W. Daniels, president of NCC, the papers address: federalism, the myth of two founding peoples in Canada, the Metis Nation and its role in Canadian history, the James Bay Agreement, the COPE settlement, rights of indigenous peoples, and multiculturalism and the Metis. A French version is planned. (SB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED174372



U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

THIS DOCUMENT HAS BEEN REPRODUCED EXACTLY AS RECEIVED FROM THE PERSON OR ORGANIZATION ORIGINATING IT. POINTS OF VIEW OR OPINIONS STATED DO NOT NECESSARILY REPRESENT OFFICIAL NATIONAL INSTITUTE OF EDUCATION POSITION OR POLICY.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Harry W. Daniels

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

WE ARE THE NEW NATION

NOUS SOMMES LA NOUVELLE NATION

Ke 011512

Harry W. Daniels

Harry W. Daniels

We Are the New Nation

The Metis and National Native Policy

Additional copies may be
obtained by writing to the
Native Council of Canada
77 Metcalfe St, #200
Ottawa, Ontario K1P 5L6

Native Council of Canada
Ottawa
March/1979
ISBN NO. 0-9690970-0-X

Foreword

I had hoped to have a French version ready to be published at the same time as the English version. However, because of translation and financial difficulties it was not possible. I expect that a French version will be published within the next year but I offer my apologies to our French-speaking members and public for the delay.

I am indebted to the following people for their immeasurable assistance in putting this thin volume together; Vic Valentine, John Weinstein, Gene Rheaume, and Doug Sanders along with the members of the Board of Directors of the Native Council of Canada.

I owe a special debt of gratitude for the development of my thought on these very important issues to three not perhaps widely known but nonetheless profound Metis thinkers; to Earl Lavallee who met a tragic death while organizing Metis people, and to Rod Bishop and Don Neilson who know why I am indebted to them.

H.W.D.

Contents

INTRODUCTION 1

THE MYTH OF TWO FOUNDING PEOPLES

Federalism and the Metis Nation 3

The Metis: Cornerstone of Canadian Confederation 7

The "List of Rights" of Riel's Provisional Government 1870 17

"SEPARATE AND UNEQUAL"

Bill C-9: The James Bay Agreement 21

The COPE Settlement: A Blueprint for Internment 32

TOWARDS CO-EQUALITY: INTEGRATION vs ASSIMILATION

Rights of Historic National Minorities 47

The Metis and Multiculturalism 51

The Need for a Founding Nations Conference 53

Declaration of Rights 54

Introduction

The compilation of policy statements formed the basis of discussions between the Native Council of Canada (NCC), representing close to one million Metis and Non-Status Indians, and the federal government in 1978. These statements were presented to parliamentary committees, to conferences dealing with national policy questions, and in response to the native land claim settlement reached during the year.

These documents are compiled to serve two purposes:

1. to further discussions on the relationship of native people to national policy so that native people can be involved in and contribute to the formulation of that policy

and

2. to disseminate this information to interested public groups so as to apprise Canadians of issues of concern to native people.

Throughout 1978 the NCC pressed for the recognition of the rights of Metis and Non-Status Indians as indigenous people and as historic national minorities. These rights go far beyond the general and vague right to "equality of opportunity" which governments promise all disadvantaged minority groups. Well intended as it may be, this promise provides little protection against the erosion of the unique rights due to Canada's original population.

We believe that if native collectivities are to be fully incorporated into Canadian society, native people must be *guaranteed* the right to participate, as partners, in the political and economic structures of this land. One of the intentions of these policy statements is to draw attention to the suppression of historic national minority rights by virtue of an inflexible federalist system of government, by misguided national policies such as multiculturalism, and by recent land claim settlements like the COPE settlement. More importantly, these documents propose constructive possibilities for the integration of native collectivities into Canadian society as

part of a search for alternatives to the threat of destruction hanging over native societies and cultures today.

We can only hope that out of this discussion will come a basis for a comprehensive native policy which will take into account the special rights, needs, and contributions of the indigenous population of Canada.

Harry W. Daniels
President, Native Council of Canada
Ottawa, 1979

The Myth of Two Founding Peoples

FEDERALISM AND THE METIS NATION*

The Native Council of Canada represents about one million Metis and those people excluded from the Indian Act, but referred to in the Constitution as "Indians" — a European term for the original people of this land.

During the present Canadian unity debate it has become blatantly clear that the major issue is a clash between the "Anglophones" and the "Francophones" with very little emphasis in relation to other cultures. The rhetoric of the debate cites only two "founding" cultures in Canada and ethnocentrically excludes native people — the first citizens of Canada and their descendants. How can we so easily ignore the contributions of Native Canadians who helped establish and reinforce the very fabric of the kind of Canadian unity we seem so intent on preserving today?

The attitude that there are only two "founding" cultures in Canada is typical of the colonialist, and even racist, attitudes which Native Canadians are forced to contend with. It is an attitude which can only add to the resentment and distrust which Native Canadians feel for Canadian governments. It is an attitude which must change radically if Canadian unity is ever to be a functioning reality.

What do we really mean by "unity" in Canada? It must centre around a strong sense of national identity, of course; but an identity which has respect for and embraces all cultures. This is impossible if we insist on maintaining the delusion that there were only two founding cultures in Canada. What happens then to the culturally vibrant and linguistically diverse groups that have existed here from time immemorial? With 56 native languages in Canada, how can we be focused only on bilingualism? In the face of historic reality only the most hardened elitist could write off

* This paper is an edited version of a presentation by Harry Daniels, President of the Native Council of Canada, to the Task Force on National Unity, Ottawa, March 2, 1978.

native cultures as having made no contribution to Canadian life. Can we possibly accept this elitist attitude and still seriously expect to develop, foster, and preserve Canadian unity? It hardly seems possible.

Let me cite here two sections of a resolution that was accepted by the World Council of Indigenous Peoples held in Kiruna, Sweden in August of 1977.

> S.S. (4) That under no circumstances should Indigenous people be subjected to policies of assimilation into the dominant group, but be guaranteed the fundamental right to pursue our own cultural, linguistic, social, political, religious and economic modes of expression.
>
> S.S. (5) That since all states are multinational in composition, we pursue a policy that is genuinely multicultural in nature to insure that no one culture dominates the others or becomes the official culture of that state.

In the context of those statements, it follows that we have to protect our rights as first citizens of this country if we are to realistically address ourselves effectively to the unity issue.

I suggest that there were more founding cultures in Canada than the present debate is prepared to include. More particularly, I speak of the Metis people — the Metis Nation — a people who once enjoyed independence and interdependence with the rest of Canadian society as a culturally vibrant and, at one time, economically viable society. We must consider the major role the Metis Nation played in unifying this country during its infancy and how much our presence here influenced the course of history. In response to present day concerns for unity we must not only preserve, but strengthen the Metis Nation which has contributed so much more than is generally recognized to the fabric of Canadian life.

The notion of Metis nationhood is hardly a recent revelation. But when most Canadians conjure up the historic mission of the "National Dream" they seldom realize that the transcontinental railroad — and most other transportation systems for that matter — followed routes already blazed by Metis pioneers. As commercial harvesters of the buffalo meat on which the posts of the fur companies relied, as freighters, as free traders who developed a transportation infrastructure from the Red River settlement far into the west and deep into the United States, and as a free people who lived full lives in an environment most others feared, the Metis played a dominant role in the opening of Canadian frontiers. As they penetrated new lands, the Metis fought major battles with the Sioux, signed treaties with them, brought other Indians into trading networks with expanding settlements and were often essential middlemen during the signing of treaties between the government and Indians.

Out of the unique roles evolved by the offspring of French and Scottish fur traders and Indian women, there emerged a Metis culture of dress,

song, and dance that persist to this day. From that lifestyle grew a sense of free nationhood which, when necessary, expressed itself militantly in the formation of a Metis provisional government in Manitoba in 1869, and the Riel uprising in Saskatchewan in 1885.

This sense of a free, independent people building a nation in their native land figures as large in the claims presented by Metis organizations to the federal government today as it did historically. The Metis are the only charter group in Canada with a history of national political independence before joining Confederation. The Metis, under the leadership of Louis Riel, established a provisional government in 1869 which negotiated Manitoba's entry into Confederation on terms originally designed to protect the political, cultural, and economic rights of the Metis. The Macdonald government's betrayal of those terms resulted in the loss of Metis lands to speculators and a brutal disregard of Metis language and civil rights.

The masterminds of Confederation, the founding fathers of Canadian federalism were unable, or perhaps just unwilling, to accommodate the civil rights of a national minority which had democratically organized in defense of lands they had occupied for generations. Macdonald had succeeded in putting down the "damn halfbreeds" but he had also created, or at least exposed, a fundamental weakness in Canadian federalism — an inability to deal with national minorities. With no constitutional guarantees, the Metis were pushed far into the background of Canadian life, but the spectre of the Metis Nation did not pass unnoticed.

The international outcry that followed the execution of Riel in 1885 reverberated most loudly in Quebec. The hopes of the Quebecois for an equal partnership in Confederation were buried with Riel. The resulting mistrust and fear not only helped topple the Macdonald government of the day, but doomed the Conservative party in Quebec and planted the seeds for the tortuous growth of the Parti Quebecois we have today.

Seen within this historical context, the Metis have played a vanguard role in Canadian history. The Metis response to the threats of economic and cultural dislocation with the formation of provisional governments in 1870 and 1885 was as much an affirmation of national rights as the election of the Parti Quebecois in Quebec. In the long run, Sir John A. Macdonald's insistence that Riel "shall hang though every dog in Quebec bark in his favour" might prove as costly to Confederation as Prime Minister Trudeau's insistence on categorically rejecting any formal recognition of Canada's multinational nature.

It is no historical accident that just as Riel's execution in 1885 galvanized French Canadian nationalism into action, so today the election of the P.Q. is accompanied by a resurgence of Metis nationalism. Although the relationship between the two movements cannot be accurately called a causal one, both movements are unanimous in their rejection of a federalism

which will not accommodate the birthright of national groups within the larger body.

Of all the groups in Canada, the Metis have clearly suffered the most from an inflexible federalism that emphasizes provincial boundaries at the expense of nation-wide interests which transcend those boundaries. Because the federal government precludes any special status for national minorities and avoids the kind of legal responsibility for Metis that it jealously guards in relation to Indians, the onus for improving the socio-economic condition of hundreds of thousands of Metis has fallen to provincial governments. The individual provincial governments, however, have amply demonstrated they lack the will — to say nothing of the lack of administrative machinery and constitutional powers — to tackle the problems of the Metis which have been, and are, national in scope. Ottawa's token response on behalf of the Metis in the last decade has been confined to sporadic attempts at "rural poverty" and "regional disparity" programs, and are obviously no solution to the basic problem.

The basic problem, the fundamental issue at stake for Canada's Metis, is the unwillingness, inability, or incapacity of the federal government to deal with the Metis as an indigenous people, a national minority with a centuries-old claim to *Aboriginal Rights*. This issue must be high on the list of priorities of those who seriously and honestly expect the national unity debate to produce a realistic basis for the patriation of our federal constitution. From the Metis perspective a unity debate between two self-proclaimed "founding" cultures which excludes the first citizens of this country can only be categorized as an exercise in futility.

If the concept of unity and the constitution itself is to have any semblance of reality, Metis claims must be drawn into the national unity debate. The Metis have always opposed a separatist solution. The Metis rejected independent nationhood and annexation to the United States because they were convinced their rights as a national group would be protected in Confederation. The historic reality of an inflexible federalism has written some painful and even bloody pages in Canadian history, but it is not too late to learn from that experience. Canadian federalists can draw some valuable lessons from the Metis experience in terms of developing a federal concept in which different national expressions can coexist. But the basis for that coexistence must be cooperatively developed.

In short, we are saying that rights of indigenous peoples must be protected by the constitution. We are saying that any revision to the constitution must include native spokesmen as delegates on equal footing with provincial premiers, not just as witnesses at hearings like this. Metis rights, native rights, the rights of indigenous people have to be enshrined in the constitution of this country. If the rights of Metis and Indians are not secure, then neither are yours.

THE METIS:
CORNERSTONE OF CANADIAN CONFEDERATION*

Background:

The British North American Act of 1867, with its subsequent amendments, is the written constitution of Canada. It represents the principles, no matter how vaguely defined, by which Canadians are governed.

In its present form, the constitution reflects, to some degree, a duality in Canadian society between its French and English speaking elements; but a third cultural entity does exist in the Constitution in the form of persons who are identified as having a direct relationship with the Crown — the "Indians".

This constitutional reference to Indians has, over succeeding years, become synonymous with the notion of "special status". Implicit in this concept are many historically rooted realities. One is that the Indians are, in fact, the "first Canadians". Another is that, as a collectivity within Confederation, Indians relate directly to the authority of the Crown as vested in the federal government rather than the intermediary levels of provincial governments. The concept also implies a protection of rights and privileges gained as a result of historic political alliances and treaties of land transfer which have implications reaching beyond the concept of "normal" citizenship.

This "special status" for Indians remains implicit in the proposed amendments to the constitution, but, unfortunately, is not being further articulated or specifically defined despite increasing confusion as to exactly who is included in the historical reference to "Indians" in the BNA Act. It is our contention that the vagaries of interpretation surrounding the reference to "Indians" in the constitution have not served native people well since Confederation. There has been too much necessity for faith in the inherent feelings for freedom and justice which our forefathers apparently intended to instill into the institutions and peoples of Canada. The passage of time and a tragic history of betrayed expectations has seriously eroded this faith.

To leave the ambiguous provisions of the BNA Act dealing with Indians so open-ended in the proposed amendments is to condemn native people in Canada to a future plagued by the whims and biases of legislative expediency. All of the Metis people and tens of thousands of Indians have been deprived of their constitutional rights since 1867. This has been accomplished by laws of expedience, by administrative fiat, and by what amounts to an arbitrary and certainly unilateral process of a shrinking definition of who is an Indian under the Indian Act.

---

* This paper is an edited version of a presentation by Harry Daniels, President of the Native Council of Canada, to the Special Joint Committee of the Senate and House of Commons on the Constitution of Canada, Ottawa, August 23, 1978.

The generality of the present constitutional reference to Indians perpetuates the kind of situation where a court, although it finds a certain government measure unconstitutional, can by virtue of the lack of explicit description to the contrary, find that same measure technically "legal". When legality can be divorced from constitutional intent, as has happened so often with native people, it tempts the exercise of unchecked political power. Many Canadian governments have deprived native peoples of their rightful place in Canadian society on the strength of measures which are often rationalized as being technically "legal". The use of such power is fostered by expediency and too rarely tempered by justice. It must be seen, from a native perspective, as a form of tyranny against which neither the present nor the proposed constitution offers much protection.

It is our view that the constitutional amendments should spell out the intent which the original provision was intended to reflect at the time of Confederation. In so doing, the amendments would give proper meaning and substance to the history, contribution, and potential of Canada's native people. This requires a more explicit identification of who an "Indian" is; recognition that native people are one of the founding groups of Canada; and a recognition of their "special status" within Confederation in terms which divest the concept of its current connotation of government wardship.

Who Is A Native?

Most of the sectors of federal responsibility defined under Section 91 of the constitution (e.g., defence, currency, penitentiaries, etc.) are clear. The reference to "Indians and lands reserved for Indians" under this same section, however, appears to have been interpreted at best indifferently and at worst, in a manner calculated to erase Indians' rights entirely.

The weight of evidence over the years suggests that by a process both of omission and commission, the federal government has tended to erode and reduce its responsibilities to native peoples. The effect has been to fragment a people originally recognized in the constitution as an "Indian" collectivity into registered Indians, urban Indians, non-status Indians, Inuit, Metis, treaty Indians, non-treaty Indians, etc. One result of this legal and administrative dispersal of the native people has been to create hopelessly confused jurisdictional tangles, to deprive native people of badly needed services and to dilute their sense of identity and community. This process has also served the purpose of decreasing the number of people who are recognized by the federal government as having "special status".

Underlying this process of fragmentation and dispersal there is a clear intent to accelerate the total assimilation of native people into the general population. Practice speaks louder than words. We believe, therefore, that placed in a historical context, such current federal sentiments such as

"justice demands full respect for the dignity and rights of native peoples" are too ephemeral and basically meaningless.

Today, only about one-third of native peoples are recognized by the federal government as being native. The two-thirds excluded include Metis and large numbers of Indians who, under a myriad of rules and regulations invented since 1867, are no longer regarded as native in terms of federal constitutional responsibility. The Inuit similarly could have become a non-people had a Supreme Court decision in 1939 not affirmed that they came under the meaning of Section 91 (24).

We believe that the constitution confers special status on the Metis, along with its associated benefits and rights. This fact is well established in history.

Metis and half-breeds' rights were recognized in a series of statutes and court decisions between 1850 and 1894. It is our view that the constitution of 1867, occurring as it did in a context of legislative and judicial recognition of the Metis fact in Canada, was intended to reflect this in Section 91 (24).

The paramount issue, after 1870, was that of aboriginal title. Among its other purposes, the Manitoba Act sought to extinguish Metis title by means of special land grants. This measure was obviously predicated on a recognition of the aboriginal nature of Metis rights and identity. Similarly, the land rights of resident halfbreeds in the Northwest Territories were recognized in the Dominion Lands Act of 1879 in connection with the "extinguishment of Indian title."

As native people were submerged in succeeding waves of migration, their political leverage lessened and they became increasingly vulnerable to subterfuge and manipulation. Successive government programs were blantantly designed to eliminate native people entirely from federal responsibility by simply redefining them legally and administratively. In time, the constitutional reference to Indians, and the intent it originally represented, would be seen as a quaint Canadian constitutional idiosyncracy. By consistently shrinking the definition of who native people were, legally, the federal government hoped to eventually rid themselves forever of an historical responsibility.

The constitutional amendments offer an opportunity to restore both the original intent of the BNA Act in its application to native people, and to elaborate its purpose in terms of current Canadian realities. If there is any commitment in Canada to equality and freedom, and to a society which values both uniqueness and interdependence, then the rights of Metis people and the "unrecognized" Indians must be accepted at least on a par with the rights of all Canadians. If native people do not gain their place in the sun, neither will any other Canadian.

As now written, the constitutional amendments avoid a recognition of

any commitment to the restoration and continuance of a special relationship between the Crown and native people. References in the preambles to a "renewal of Federation wherein cooperation is fostered among Indians, Inuit and other Canadians" smacks of mere rhetoric. Emphasis on "equal rights and opportunities" has curious parallels with the government's policy of "non-discriminatory participation by Indians in Canadian society" which was enunciated in 1969 in a White Paper. This policy, which the federal government hastily withdrew in the face of united native opposition, was designed to destroy forever the historical, constitutional and legal rights and claims of native people.

As they stand, therefore, the constitutional amendments are not acceptable to native peoples. They do not guarantee a continued recognition, nor attempt a more explicit articulation of "special status" in the constitution. Neither do these amendments address the problem of restoring "special status" to the Metis and the Indians who are no longer recognized legally as such.

At stake are all the additional rights which accrue to native people as the aboriginal inhabitants of Canada which exist over and above the normal rights and duties of citizenship. These refer to land rights, culture, customs, traditions and life styles which constitute the essence of Metis and Indian identity.

Who Are The Founding Peoples?

Another fundamental omission in the constitutional amendments is some tangible recognition that native people were the original inhabitants of this country and that, from the start, they played a vital and indispensable role in founding and shaping its development. Absent-minded and passing references to this fact in brochures are patronizing and do not constitute real recognition.

A few examples, picked out of an historical continuum, will illustrate that Canada today might have a very different geographic configuration, if indeed it would have existed at all, had it not been for the crucial role played by its native people.

People of Indian origin originally held title and enjoyed the rights of use and possession over the total area of what is now Canada. This fact was recognized from a native perspective by the Royal Proclamation of 1763 which in turn provided the basis for subsequent treaties and other means of extinguishing aboriginal land title. This process was not accomplished entirely without conflict, but the conflict was minimal compared to the costly wars of extermination which were fought in the U.S.A.

The native people in Canada, for the most part, cooperated peacefully as allies and partners in the business of founding a nation and expected in return that promises which had to do with their lands and cultural and

economic survival would be kept. It is still not too late to honour these promises.

As allies, native nations also played a central role in historical events leading to the formation of Canada. After capitulation, Quebec was regarded as a British Franco-Indian province in deference to the major groups shaping its destiny. During the wars with the U.S.A., Indian forces held the balance of power in Canada and had a critical part to play in protecting their country's borders from persistent encroachments from the south.

The Metis of the North West formed the first provisional government under Louis Riel in 1869 and laid the foundation for the creation of Manitoba and its subsequent entry into Confederation. It was the Metis who insisted on federation with Canada and resisted American annexation policies. Two Metis wars of resistance were fought to protect their land rights and to gain such other democratic freedoms as representation in parliament, language rights for both French and English, etc. The Manitoba Act was a negotiated response to the demands of Riel's Provisional government, and a condition of its dissolution.

There are now more than a million Metis and Indian people in Canada. We are beginning to stand up and speak out. As one of the founding peoples of this country, we are asking for long overdue recognition and redress. Government response to our proposals is likely to determine the future of both the native people and Canada as a whole. The failure of John A. MacDonald to correctly read the Metis messages from the North West in 1869 and 1885 proved costly for his party and for the cause of national unity — even to this very day.

We are asking, therefore, that the constitutional amendments become one instrument for re-affirming the hard-earned rights of native people in Canada. We propose, in effect, that a new amendment be written, which will guarantee in perpetuity certain rights, resources and institutional relationships for native people. In so doing, the constitution will discharge historical obligations and reinstate commitments to native people which have never been properly fulfilled. At the same time, the proposed constitutional amendments offer an opportunity to specify the special status of native people within the framework of a renewed Federation in a way which enhances their potential contribution to Canada's future development as a nation.

The Concept Of A Native Collectivity:

In re-affirming for native people a special place in the development of a Canadian identity, the foundations would be laid for a policy which would include some of the following elements:

1. *All* native people would be included in such a reference, including Metis, Inuit, and "non-status" Indians.

2. Special status under the constitution would provide the opportunity for native groups, in their various regions, to exercise their rights of self-determination as indigenous people within the framework of Confederation.

3. Consistent with this aim, native people would exercise the right to possess and use lands needed to ensure their economic self-reliance.

4. Native people would also have the right to practice and preserve their languages, traditions, customs and values, and to develop their own special institutions.

Assumptions underlying the concept:

1. "Special status" as implied in the constitution can be interpreted to mean that certain native groups can assume many of the powers and prerogatives of "provinces" and relate to the federal government accordingly.

2. A relationship between the larger native groups and the federal government could be developed in terms of two cooperative levels of government, with defined spheres of responsibility.

3. Placing federal/native relationships on an inter-governmental basis, moreover, provides a framework for resolving current problems which have to do with mineral and renewable resources on native lands, funding of social and economic programs, taxation, consultation, and a host of other questions.

Proposed Amendment:

A new and separate section would be included as a constitutional amendment which would read as follows:

Ancillary Provisions Respecting Native People

The provisions of this division are established and affirmed on the historical fact that native peoples played a vital role in the founding of Canada and on the fundamental proposition that as a result of various treaties, agreements, undertakings and understandings entered into, native people derive special rights and entitlements, and maintain a special place within the Canadian federation.

To these ends, it is accordingly declared that in Canada, native people shall enjoy and continue to enjoy the following rights and entitlements:

— the right to include all persons in their number by virtue of Indian blood or by marriage or adoption.

— the right to retain, modify, or develop their culture, customs, traditions and life-styles as native people.

— the right to manage their affairs and their rights in land.

— entitlement to additional and special services and programs under the exclusive legislative authority of the Parliament of Canada.

— entitlement to guaranteed representation in all legislative assemblies.

— entitlement to executive councils and to a native legislature which will have the same relationship to Canada as provincial legislatures.

— the right to administer programs specifically in relation to education.

The Metis, together with other native people, are seeking the restoration of fundamental political, cultural and economic rights. Prior to 1870, the Metis enjoyed such rights and were instrumental in bringing Manitoba into Confederation on the understanding that their nationhood and the rights and duties implicit in this status would be respected. This proved to be an empty guarantee. Today, there is an opportunity once again to recognize that one of the cornerstones of federation is represented in Canada's native history. To ignore this reality is to undermine the essential concept of federation and distort the development of a nation which has the potential to become truly Canadian. Metis nationalism is Canadian nationalism.

APPENDIX A

LEGISLATIVE DEFINITION OF NATIVE PEOPLE BEFORE B.N.A. ACT

Pre-Confederation legislation in the Province of Canada used broad criteria in determining who was to be recognized as native people.

1. **An Act for the better protection of the Lands and Property of the Indians in Lower Canada,** 10 August, 1850: Canada. Parliament, Statutes of Canada, 1850, (13 and 14 Victoria), Chapter 42, Section 5.

   Definition of an Indian:

   First — All persons of Indian blood, reputed to belong to the particular Body or Tribe of Indians interested in such lands, and their descendants;

   Secondly — All persons intermarried with any such Indians and residing amongst them, and the descendants of all such persons;

   Thirdly — All persons residing among such Indians, whose parents on either side were or are Indians of such Body or Tribe, or entitled to be considered as such; and

   Fourthly — All persons adopted in infancy by any such Indians; and residing in the Village or upon the lands of such Tribe or Body of Indians, and their descendants.

2. **An Act to encourage the gradual Civilization of the Indian Tribes in this Province, and to amend the Laws respecting Indians,** 10 June, 1857: Canada. Parliament, Statutes of Canada, 1857, (20 Victoria), Chapter 26, Section I.

   . . . The third section of the Act passed in the Session held in the thirteenth and fourteenth years of Her Majesty's Reign, chaptered seventy-four and entitled, An Act for the protection of the Indians in Upper Canada from imposition and the property occupied or enjoyed by them, from trespass and injury; shall apply only to ***Indians or persons of Indian blood or intermarried with Indians, who shall be acknowledged as members of Indian Tribes or Bands residing upon lands which have never been surrendered to the Crown.*** *. . .*

APPENDIX B

CONSTITUTIONAL RECOGNITION OF RIGHTS OF METIS AND NON-STATUS INDIANS

1. **Royal Proclamation of 1763,** R.S.C. 1970, Appendices, pp. 123-127.

". . . And whereas it is just and reasonable, and essential to our Interest, and the Security of our Colonies, that the several Nations or Tribes of Indians with whom We are connected and who live under our Protection, should not be molested or disturbed in the Possession of such Parts of Our Dominions and Territories as, not having been ceded to or purchased by Us, are reserved to them, or any of them, as their Hunting Grounds. — We do therefore, . . . declare . . . that no Governor or Commander in Chief in any of Our Colonies . . . do presume, upon any Pretence whatever, to grant Warrants of Survey, or pass any Patents for Land beyond the bounds of their respective Governments . . . ; as also no Governor or Commander in Chief . . . do presume . . . to grant Warrants of Survey, or pass Patents for any Lands beyond the Heads or Sources of any of the Rivers which fall into the Atlantic Ocean from the West and North West, or upon any lands whatever, which not having been ceded to or purchased by Us as aforesaid, are reserved to the said Indians, or any of them."

This document recognized the aboriginal title of all Native people. Not only is this Proclamation a part of Canada's constitution, it also has the force of an Imperial statute. As such it cannot be amended or repealed by the Canadian Government alone.

2. **British North America Act, 1867,** R.S.C. 1970, Appendices, pp. 191-238.

Section 91 of the Act assigns legislative authority to the federal government in regards to all Native people.

3. **Manitoba Act, 1870,** R.S.C. 1970, Appendices, pp. 247-256.

A substantial portion of the Bill of Rights presented by Louis Riel's Provisional Government to the Canadian Government in 1870 was accepted and legislated into effect by the **Manitoba Act.**

— S. 1 provides for the entry of Manitoba into Confederation as a Province,

— SS. 3 & 4 provide for the representation of Manitoba in the Senate by two Members; in the House of Commons by four Members,

— S. 23 guarantees English and French language rights in the Province,

— S. 31 provides for the allotment of one million four hundred thousand acres to the halfbreed or Metis residents of the Province towards the extinguishment of their Indian title.

APPENDIX C

LEGISLATIVE RECOGNITION OF RIGHTS OF METIS AND NON-STATUS INDIANS

1. **Dominion Lands Act, 1879,** 42 Victoria, Chapter 31, Section 125 (e).

This Act recognized the aboriginal rights of halfbreeds or Metis resident in what is now Saskatchewan, Alberta, the North-West Territories and Northern Manitoba. It reads as follows:

"... to satisfy any claims existing in connection with the extinguishment of the Indian title, preferred by Halfbreeds resident in the North-West Territories outside of the limits of Manitoba, on the fifteenth day of July, one thousand eight hundred and seventy, by granting land to such persons, to such extent and on such terms and conditions, as may be deemed expedient;"

LIST OF RIGHTS
RIEL'S PROVISIONAL GOVERNMENT, 1870*

1st. *That the Territories, heretofore known as Rupert's Land and North West, shall not enter into Confederation of the Dominion, except as a province, to be styled and known as the Province of Assiniboia, and with all the rights and privileges common to the different provinces of the Dominion.*

2nd. *That we have two representatives in the Senate, and four in the House of Commons of Canada, until such time as an increase of population entitles the province to a greater representation.*

3rd. *That the Province of Assiniboia shall not be held liable, at any time, for any portion of the public debt of the Dominion, contracted before the date the said province shall have entered the Confederation unless the said province shall have first received from the Dominion the full amount for which the said province is to be held liable.*

4th. *That the sum of eighty thousand dollars be paid annually by the Dominion Government, to the Local Legislature of this province.*

5th. *That all properties, rights and privileges enjoyed by the people of this province, up to the date of our entering into the Confederation, be respected, and that the arrangement and confirmation of all customs, usages and privileges be left exclusively to the Local Legislature.*

6th. *That during the term of five years the Province of Assiniboia shall not be subject to any direct taxation, except such as may be imposed by the Local Legislature for municipal or local purposes.*

7th. *That a sum of money, equal to eighty cents per head of the population of this province, be paid annually by the Canadian Government to the Local Legislature of the said province, until such time as the said population shall have increased to six hundred thousand.*

8th. *That the Local Legislature shall have the right to determine the qualifications of members to represent this province in the Parliament of Canada and in the Local Legislature.*

9th. *That in this province, with the exception of uncivilized and unsettled Indians, every male native citizen who has attained the age of twenty-one*

---

* Many of the following provisions drafted by the Metis Provisional Government were legislated into effect by the Manitoba Act of 1870.

years; and every foreigner, being a British subject, who has attained the same, and has resided three years in the Province, and is a house-holder; and every foreigner other than a British subject, who has resided here during the same period, being a house-holder, and having taken the oath of allegiance, shall be entitled to vote at the election of members for the Local Legislature and for the Canadian Parliament. It being understood that this article be subject to amendment, exclusively by the Local legislature.

10th. *That the bargain of the Hudson's Bay Company, in the respect to the transfer of the government of this country to the Dominion of Canada, be annulled so far as it interferes with the rights of the people of Assiniboia and so far as it would affect our future relations with Canada.*

11th. *That the Local Legislature of the Province of Assiniboia shall have full control over all the public lands of the province, and the right to annul all acts or arrangements made or entered into with reference to the public lands of Rupert's Land and the North West, now called the Province of Assiniboia.*

12th. *That the Government of Canada appoint a Commissioner of Engineers to explore the various districts of the Province of Assiniboia, and to lay before the Local Legislature a report of the mineral wealth of the province, within five years from the date of our entering into confederation.*

13th. *That treaties be concluded between Canada and the different Indian tribes of the Province of Assiniboia, by and with the advice and cooperation of the Local Legislature of this province.*

14th. *That an uninterrupted steam communication from Lake Superior to Fort Garry be guaranteed to be completed within the space of five years.*

15th. *That all public buildings, bridges, roads, and other public works be at the cost of the Dominion Treasury.*

16th. *That the English and French language be common in the Legislature, and in the Courts, and that all public documents as well as Acts of the Legislature be published in both languages.*

17th. *That whereas the French and English speaking people of Assiniboia are so equally divided as to numbers yet so united in their interests, and so connected by commerce, family connections, and other political and social relations, that it has happily been found impossible to bring them into hostile collision, although repeated attempts have been made by designing*

strangers for reasons known to themselves to bring about so ruinous and disastrous an event.

And Whereas, after all the troubles and apparent dissensions of the past, the result of misunderstanding among themselves they have, as soon as the evil agencies referred to above were removed, become as united and friendly as ever; therefore, as a means to strengthen this union and friendly feeling among all classes we deem it expedient and advisable:

That the Lieutenant-Governor who may be appointed for the Province of Assiniboia should be familiar with both the French and English languages.

18th. *That the Judges of the Superior Court speak the English and French languages.*

19th. *That all debts contracted by the Provisional Government of the Territory of the North West, now called Assiniboia, in consequence of the illegal and inconsiderate measures adopted by Canadian officials to bring about a civil war in our midst, be paid out of the Dominion Treasury, and that none of the members of the Provisional Government or any of those acting under them be in any way held liable or responsible with regard to the movement, or any of the actions which led to the present negotiations.*

20th. *That in view of the present exceptional position of Assiniboia duties upon goods imported into the province shall, except in the case of spirituous liquors, continue as at present for at least three years from the date of our entering the Confederation and for such further time as may elapse, until there be uninterrupted railroad communication between Winnipeg and St. Paul, and also steam communication between Winnipeg and Lake Superior.*

"Separate and Unequal"

JAMES BAY AGREEMENT BILL C.9 *

Mr. Chairman, Honourable Senators, let me begin by thanking you for this opportunity to meet with your committee. The Native Council of Canada, whom I represent, has a special mandate to speak out on matters of national importance in the interests of the 750,000 Metis and Non-Status Indian people of Canada. Bill C.9, which is before your committee, is just such an issue. The Native Council of Canada made representations earlier to a committee of the House of Commons but that body failed to implement any of the recommendations we made to it. We are here today because we believe that the Senate has the opportunity, indeed the responsibility, to have Bill C.9 amended. At the conclusion of my statement I will be proposing a course of action which I believe that the Senate of Canada could follow that would result in overturning the basic injustices the proposed legislation now contains. It is my intention, as president of the Native Council of Canada, to pursue every legal and constitutional avenue open to me to bring about these changes. It is my hope that your committee will be my partner in this effort.

The James Bay Agreement has been heralded by its supporters as being a unique, modern way of settling disputes over aboriginal rights and native land claims. Indeed some have said it is a model of how negotiations between native peoples and government can be carried out. Mr. John Ciacca, member of the Quebec National Assembly and special representative of former Premier Robert Bourassa in the James Bay negotiations, says in the introduction to the printed version of the Agreement that it is "an Agreement without precedent in the history of North America in relations between the State and native peoples". He also says that it has the desirable virtue of rejecting "paternalism as a policy for dealing with native peoples."

---

* Brief Presented by Harry W. Daniels, President of Native Council of Canada, To the Standing Committee of the Senate on Legal and Constitutional Affairs, Ottawa, June 7, 1977.

page 20 blank.

His enthusiasm does not impress us. We are frankly alarmed when he goes on to say "This Agreement will, in fact, take precedence over the Federal Indian Act." Furthermore, we cannot understand why the Hon. Judd Buchanan, former Minister responsible for Indian Affairs, signed the Agreement on behalf of the Federal government when it contains statements devastatingly critical of Federal government policy such as "the historic approach to Indian affairs in this country is no longer valid, *and no longer acceptable*." Does the Federal government agree with these statements? If it does it should say candidly what alternative policy is being contemplated.

The facts are, Mr. Chairman, that the Agreement is neither unique nor modern. It would perpetuate a gross injustice if it were used as a model for future agreements between government and native peoples. The Agreement is in fact a pale, less generous version of the one negotiated between the U.S. government and the native peoples of Alaska in 1971. The basic formula is identical:

— extinguishment forever of all aboriginal titles or claims of title in return for payment of monies without interest over a 20 year period;

— 3 categories of land for use and occupancy by native peoples;

— the creation of communal corporate structures for economic and social development as well as promises of opportunities to participate in local government structures.

The Alaska Settlement, at least from the point of view of compensation, is far more generous — in exchange for 325 million acres of land $962,500,000, ($2.92 per acre) compared with $225 million in the James Bay Agreement in exchange for extinguishment of title to 262 million acres. The James Bay Agreement works out to about 86 cents per acre — that is, 14 cents less per acre than was paid by the government in the 1880's for Metis scrip lands in Manitoba. One feature of the Alaska deal which is absent in James Bay is the inclusion of Metis and non-status Indians. They were involved throughout the negotiations and share in the compensation. Although it is my belief that it is morally wrong for any government — American or Canadian — to alienate native people from the land and their birthright for all time, the Alaska arrangement at least minimizes the bitterness and factionalism based on race between people of native ancestry. In northern Quebec we are now seeing bitterness and hostility of a type which only racial discrimination and racial jealousies can engender. This is hardly the basis for the "new and more dignified footing" which Mr. Ciacca promises the Agreement will provide for native communities in northern Quebec.

Mr. Chairman, Hon. Senators, I have said that the James Bay Agreement is neither unique nor modern nor even generous. As a matter of fact it is a variation of the old White man-Indian game, in which pretty pieces of paper and promises are exchanged for land. There is even the promise of

local economic development programs which when looked at closely turn out to be variants of the old money-box game — turn the crank and money comes out of the box as though by magic. The economic development promised is of a "penny capitalism" kind — handicrafts or moccasin polishing projects if you like — in which capital investment is high, the risks great — the returns meagre. Native people throughout northern Canada for the past 20 years know how unrewarding and futile this kind of economic development really is. They also know that if there were any money to be made through crafts and similar marginal ventures, the White man would have started such businesses long ago. Dr. Diamond Jenness, a world famous authority on Canada's native peoples, years ago demonstrated that such forms of economic development merely shift the population in northern regions from dependency on resource based activities, such as hunting and trapping, to cottage industries which are at the mercy of "outside" market fluctuations and fashion fads.

If the Agreement were truly concerned with improving the economy of the area and making native people better off, why didn't they give the native people shares in the Quebec Hydro or the James Bay Corporation as part of the compensation? Why didn't they offer the money in a lump sum so that it could be invested anywhere in Canada or in the world for that matter for the highest returns — grade A bonds yield 9½ percent interest on today's market? I strongly suspect that the answer to these questions, Mr. Chairman, is that the Agreement is in fact a continuation of the same old policy of paternalism without the guarantees inherent in the reservation system and the Indian Act.

Category I lands are in fact reserves over which the Province of Quebec, and not the Parliament of Canada, nor native peoples, shall have the final say. Future encroachment on these lands for whatever purpose can be achieved by the Provincial government of the day if Bill C.9 is approved by the Senate. Though it has not always lived up to its sacred trust responsibility for native peoples, the Parliament of Canada has been a safeguard against avaricious encroachment by White society on those meagre portions of territory now occupied by native peoples. This sacred trust, this awesome responsibility is brushed aside as being inconsequential in Bill C.9.

The legislation before you casually gives up this responsibility. Article 7 says

"Paragraphs 2(c), (d) and (e) of *The Quebec Boundaries Extensions Act 1912* and the words "upon the following terms and conditions and subject to the following provisions" immediately preceding those paragraphs are repealed."

The relevant section of *The Quebec Boundaries Extension Act, 1912* are these:

"(c) that the province of Quebec will recognize the rights of the Indian in-

habitants in the territory above described to the same extent and will obtain surrenders of such rights in the same manner, as the government of Canada has heretofore recognized such rights and has obtained surrender thereof and the said province shall bear and satisfy all charges and expenditure in connection with or arising out of such surrenders;
(d) that no such surrender shall be made or obtained except with the approval of the Governor-in-Council;
(e) that the trusteeship of the Indians in the said territory, and the management of any lands now or hereafter reserved for their use, shall remain in the Government of Canada subject to the control of Parliament."

Mr. Chairman, Pontius Pilate could not have drafted a more evasive amendment to abdicate responsibility. I do not believe that the representatives of the native organizations who signed the Agreement had any idea of the implications of Article 7. In fact this innocent section is the most important one in the whole Act, abdicating as it does full responsibility of the Canadian Parliament for the well being of *all* of the native people, for all time, in the entire 410,000 square miles. Surely this change, this transfer of responsibility should be the subject of a separate Act. It should be fully debated by Parliament. It should be the subject of a referendum in northern Quebec, if not the whole country. If the Parliament of Canada is going to give up its trust surely the property should be assigned directly to the beneficiaries. Not to the Quebec Provincial government nor to the various corporations who, for very strange reasons, are co-signors of the Agreement. The role of the various Crown Corporations in this whole affair is reminiscent of the British Crown turning over Rupert's Land to a Company of Adventurers trading into Hudson's Bay. Yet we are told that the Agreement represents a new deal for native peoples. If that is so, why are the native peoples not represented on the boards of directors of the various corporations involved?

Mr. Chairman, Honourable Senators, I ask you to remember that the native people in that territory are being asked to extinguish title to the land of their ancestors for all time. Without land can there be native people? Is this new policy outlined in the Agreement not aimed at eradicating Indian and Inuit culture? Is it not contrary to the government's policy of a multicultural Canada? What is to happen to these native people after 20 years? After all the money has been paid? After all the concessions referred to in the Agreement concerning the rights of the Province and private developers to category II and III lands have been exercised? Perhaps even more important and to the point, Mr. Chairman, Bill C.9 extinguishes the rights of other native groups in the area who are not even co-signors, whose consent was not obtained. These are the Metis and Non-status Indians, the Montagnais, the Nascapi, the Tête de Boule and the Algonquian Indians. We estimate there are several thousand such native persons. Indeed they

very likely outnumber those people in the Cree and Inuit organizations who co-signed the Agreement.

Just recently I received copy of a letter from an Inuit in Sugluk, Quebec. I would like to read it to you because it expresses better than I can the deep concern, the consternation, of a people still clinging to a simple faith that the Federal Government will look after their rights and not alienate them from their land.

Inuit Community Council of Sugluk
Sugluk, Quebec
April 15, 1977

Charlie Watt
President
N.Q.I.A.
Suite 1500
505 Dorchester Blvd. W.
Montreal, Quebec
H2Z 1A8

Dear Charlie,

We are writing now for we were going to write to you here from Sugluk.

While you were here you spoke about the islands wanting to negotiate with the Federal Government. Also that you are going to have the support of the Federal Government to take the islands. This is the followup of what you said.

We cannot go with the agreement. We want Charlie Watt to tell both Governments Federal and Provincial that we cannot be included in the agreement because we are not going with any of the agreements as people of Sugluk. We also are not included in the Bill C.9. We cannot give up what power we have. We have been living here for ages and we cannot give up what our fathers worked so hard for. We just cannot sell our ways and life because this is all very valuable to us. We cannot exchange our land for money. WE WILL NOT LET THIS LAND GO JUST FOR MONEY.

At this moment we are not with the agreement. Please advise both Governments that you cannot have support or an agreement from Sugluk.

We want an agreement outside your agreement. What we want is that all Governments and all the people have peace and come up with an agreement that is solid. We have this expectation.

This thing about what N.Q.I.A. is saying of Sugluk Inuit being included is false. You should not say with the meetings you hold in Sugluk, that we are with you or that you are with us,

continued . . .

Kopak Tayara	Jimmy Kakayuk	Mark Okituk
President of I.T.N.	Director of I.T.N.	Director of I.T.N.
Charlie Saviakjuk	Peter Saviakjuk	Josepie Kaitak
President of Corp.	Vice-Pres. of Corp.	Director of Corp.
Kalingo Angotigirk	Poasie Kaitak	Jimmy Takirk
Pres. of Sugluk Co-op	Vice-Pres. of Sugluk Co-op	Secy. of Sugluk Co-op
Audaluk Koperqualuk	Thomasie Angotigirk	Eliajah Isaac
Dir. of Sugluk Co-op	Pres. of Housing Committee	Director of Housing Committee

If there is such a thing as basic law of natural justice surely the rights of these non-signatories are being violated. The fundamental law of the land will be breached if their rights are extinguished without a proper hearing, without due process. On April 28 the Hon. Warren Allmand in the debate on Bill C.9 in the House of Commons said:

"Mr. Speaker, the government cannot accept this amendment to the bill because accepting it would require that we amend the agreement, and this in turn would require us to get the consent of all the parties to the agreement. In discussing the possibility of amending the agreement to do what the Hon. Member has suggested, the government of Quebec has made it very clear in writing that it would not consent to such an amendment to the agreement as the extinguishment of all native rights throughout the territory was the precondition to Quebec entering into the negotiations. This is a fundamental position on which Quebec will not accede."

"Under paragraph 2.14 of the agreement, Quebec has undertaken a legal obligation to negotiate with other Indians and Inuit concerning any claims they may be able to establish with respect to the territory. I think I should quote that part of the agreement. Paragraph 2.14 reads. Quebec undertakes to negotiate with other Indians or Inuit who are not entitled to participate in the compensation and benefits of the present agreement in respect to any claims which such Indians or Inuit may have with respect to the territory."

But he failed to read the most significant part of the next paragraph which says,

"Notwithstanding the undertakings of the preceding sub-paragraph, nothing in the present paragraph shall be deemed to constitute a recognition, by Canada or Quebec, in any manner whatsoever, of any rights of such Indians or Inuit."

Can we really be assured by so ambiguous a promise? Surely a more reassuring guarantee could have been written into the Agreement if the Minister had taken a strong stand. The truth of the matter is that expediency rather than questions of trust and basic justice surround the

Agreement. Witness this astonishing statement of the Minister in that same debate.

"Our position on this amendment is as follows: 'We cannot accept an amendment of this kind without getting consent to amend the agreement, and that is not possible. Quebec has refused to agree. If we were unilaterally to accept the amendment without the agreement of the others, this would scuttle the entire agreement.

I might say that during the negotiations the government of Canada made suggestions that we have in the agreement proposals similar to those suggested by the Hon. Member, but they were not agreed to. We have gone back to them again, suggesting amendments to the agreement and they have refused to agree once more. So the government of Canada cannot accept this particular amendment without scuttling the entire agreement."

(Hansard p. 5090.)

Mr. Allmand must have little confidence in the rational qualities and the sense of fair play in the government and people of Quebec if he genuinely believes Quebec would scuttle the Agreement over matters of basic justice.

I would like now, Mr. Chairman, to return to the question of compensation and to comment further on the policy of "paternalism" in the administration of native affairs which we are told this Agreement eliminates.

Let me begin by saying the sum of money offered in exchange for 410,000 square miles of land and the extinguishment of all aboriginal rights and titles sounds impressive — $225 million dollars.

The first thing we should notice is that this sum is payable over 20 years in the following manner:

1. An initial payment of $75 million payable over 10 years, starting March 31, 1977, of which $42,250,000 is to come from the Province of Quebec and $32,750,000 from the federal government.

2. A second payment of $75 million to be paid by the James Bay Energy Corporation and/or Hydro Quebec. The time at which this payment is to be made is not at all clear and depends on the generating capacity of the hydro-electric stations after the execution of the Agreement. All we are told is that it will be before 31st December 1996.

3. A third payment of $75 million is promised in the form of debentures and represents compensation for full and final renunciation by the James Bay Cree and Inuit of Quebec for any and all claims forever against Quebec for royalties, taxes and similar revenues. The debentures are issued in blocks of $15 million, over a 5 year period and mature in 20 years from date of issue. They are not transferable.

The next thing we must note is that no interest is to be paid on the $150 million represented by the first two instalments. The $75 million in

debentures does promise interest payment but the amount is not specified. We are simply told that the

> "rate shall be determined by a designated representative of the Department of Finance of Quebec in consultation with one designated representative from each of the James Bay Crees and Inuit of Quebec."

The $225 million, like the pea in the shell game, is there, but it ain't there. The Quebec negotiator, Mr. Ciacca, assures us it "cannot be distributed to individuals but must be used by communities", evidently in a manner and only for the purposes spelled out in the Agreement. Clearly there is worry — if not fear — that the money would be squandered if paid directly to natives. It was the same worry, the same fear, which led White society and successive governments of Canada to adopt a policy of paternalism toward native peoples in the first place. It is like the money I put in the bank for my young son. I tell him it's his, but he cannot touch or take it out, but only use it for the purposes I have in mind for him when he grows up. The Agreement contains all of the usual restrictions on native individual liberty in fiscal matters without the guarantee to preserve aboriginal rights inherent in the Indian Act. In other words, Mr. Chairman, the name of the game here is how to keep all of the undesirable features of the reservation system and the Indian Act without having reserves and without having an Indian Act. Mr. Ciacca says "We did not want to create 'reserves' in the conventional meaning of the word, in fact we are not creating them." That is a feat of double-think which belongs in Orwell's 1984. It has no place in a serious agreement between co-equals.

Questions of paternalism aside, let us look more closely at the $225 million and ask ourselves why it is not being paid in a lump sum on the day the Agreement takes effect. $225 million invested carefully at 10% per year would yield an annual income of $22.5 million without touching the original capital. Perhaps the two governments do not have the cash on hand to foster this kind of economic development among natives. If not, why not pay them interest on the first two amounts of $75 million. Again, an interest rate of 10 percent on a loan over a 20 year term would yield an income of about $17 million per annum. Those earnings are greater than those promised in the yearly payment schedule of the present Agreement.

Interest free money is the dream of us all but it spells ruination for financial houses. The present value of the first interest free $75 million in 10 years would be about $65.5 million. For an agreement which boasts that native people are to be brought into the mainstream of modern economic life, the deal offered them by the two governments is certainly a poor lesson on how to conduct economic development or how to do business.

As for the $75 million in non-transferable debentures, I can only say that as a result of the extraordinary restraining features they are like "I.O.U.'s" written in smoke across the sky.

Mr. Chairman, I ask all of you what other group of individuals in this country are asked to give up their inheritance, their land under such terms. What home owner, what farmer, what business man would give up his property for long term payments without interest which could offset inflation and the depreciation of money over time. Yet this is what our native people are being invited to do. They are being asked to trade their capital in the form of land for promises of employment to be generated by compensation money — money which they as individuals will never see or own.

It does not take an economist to tell us that the amount of money promised is simply too small to finance business ventures in an area which is remote, has no agricultural soil, has high transportation costs and high cost of raw materials, goods and services. The economic development projects envisioned for natives are of the same old "cookie jar capitalism" kind — handicrafts, tourist guiding, etc. These are all labour intensive occupations which we know from experience do not provide enough money to live on. The irresponsible promotion of such poverty stricken forms of economic development can only succeed in raising expectations which will be cruelly smashed down. The people will be enticed to live in settlements on a permanent basis thereby losing their skills to live off the land. I predict that if this Agreement be implemented it will produce generations of welfare recipients. This is already happening in Alaska only 6 years after their agreement came into effect.

As well as money, Mr. Chairman, the Agreement promises land for native use and occupancy. Here again we find that what is being offered is neither generous nor straightforward. The Category 1 lands offered (2,140 square miles for the Crees and 3,030 square miles for the Inuit) is little more than was offered in some Treaties of 100 years ago. For example, Treaty #8, signed in 1899, promised 1 square mile of land per family of 5. The James Bay Cree are being offered about 1.6 square miles of land for a family of 5.

In a formula identical to that used in Alaska, the James Bay Agreement talks about 3 categories of land. Category 1 lands we learn are to be allocated " to native peoples for their exclusive use." These are the lands around communities which Mr. Ciacca says are reserves but not reserves. Quebec retains "certain expropriation powers" on these lands and owns the mineral and sub-surface rights. Mr. Ciacca says about these lands "that the native people will have land that to all intent and purposes they can *call* theirs, and that Quebec's presence on that land will be a reality." This is the old refrain, "What's mine is mine and what's yours is mine". That is the conception of Category 1 lands.

Category 11 lands are for exclusive hunting and fishing use by natives and that's all. This provision is like the right promised in some Treaties "to hunt, fish and trap on unoccupied Crown lands." The problem as we all know with this type of land is that it soon becomes occupied by a Provincial

park, mines, sawmills or other developments. As a matter of fact, the Agreement is very clear that the government of Quebec "may earmark Category 11 lands for development purposes at any time."

Category 111 lands, the bulk of the territory, are really not lands in which the native peoples have any special rights at all. They may use them like anyone else can. Why they are even mentioned in the Agreement at all is not clear inasmuch as harvesting of the fur, fish and timber on them has to be undertaken if good conservation practices are to be carried out.

Mr. Chairman, without sub-surface or mineral rights to even Category I lands, how can the native people of James Bay undertake profitable economic development? The whole area is one in which mining is the likely basis for future economic development. If this Agreement is sincere why deny the people ownership over the very resources that can help them the most? Are we not yet able to think of native peoples as being owners, developers, even financiers? Must we always be thought of as hewers of wood, haulers of water, makers of birch bark trinkets? Yet Mr. Ciacca so gratuitously says,

> "The native peoples who will be parties to this Agreement are not the people you see in our cities selling artwork and handicrafts. They are not the people who offer themselves as tourist attractions. They are not people who do odd jobs and live on pizzas . . . "

Mr. Chairman, they may not be now, but they most certainly will be if this Agreement is ever put into effect.

Mr. Chairman, Hon. Senators, I think Minister Allmand has been imposed on, and Parliment misled, by a document which not only misconstrues the compensation to be received but masks its true intent. That intent is to transfer trust responsibility for native peoples from the Federal government to the government of Quebec. If Bill C.9 becomes law the Parliament of Canada will have perpetrated the biggest land grab in the history of this country. I urge you and your fellow Senators to send Bill C.9 back to the House of Commons for sober second thought. I rest my case on these grounds:

First, the kind and amount of compensation is not only inadequate but grossly exaggerated;

Second, the rights of third parties living in the territory who are not co-signors to the Agreement are being extinguished without their consent;

Finally, and perhaps most important, the consequential amendment, Article 7, by transferring responsibility for native affairs from the Parliament of Canada to the Government of Quebec, represents a betrayal of constitutional responsibility with consequences which go much beyond the people of James Bay. If Parliament does not amend this Agreement native people will have no guarantee that their rights, their lands, their language, their culture will be protected.

It is the recommendation of the Native Council of Canada that this

transfer of responsibility become the subject of separate legislation, fully and openly debated in Parliament and subject to a referendum. The Parliament of Canada are the trustees for the native people, but you are being asked to betray that trust.

Mr. Chairman, Hon. Senators, I thank you for listening to my remarks. In closing, I wish to emphasize that nothing I have said should be construed as a lack of faith in the good character of the people of Quebec for whom I have the deepest respect and sympathy in their struggles to gain cultural recognition. No one knows better than my people what cultural genocide does to a nation.

Finally, Mr. Chairman, I want to make it clear that native people are not against genuine economic development. They know the needs of the modern world and they have no wish to hoard vital resources. All we ask for is the opportunity which this Bill does not provide — to take part in the development of oil, gas, hydro-electric energy resources as co-equal partners and not as humbugged victims.

THE COPE SETTLEMENT: A BLUEPRINT FOR INTERNMENT*

An Overview

The Native Council of Canada views the settlement formula typified by the COPE/Government position paper as retrogressive, and ultimately destined as establishing a "blueprint for internment" of the native people of the Western Arctic. The position paper is worthy of severe condemnation and illustrates the Federal Government's abrogation of its promise to "negotiate in good faith" with the Inuvialuit. The paper ignores the fundamental concerns of native people — recognition of their aboriginal rights and the creation of a development policy based on and administered through native principles of social, economic and cultural self-determination — and fails to create a credible basis on which the Inuvialuit might effectively attain a measure of control over their future economic and social position in the North.

Contrary to all necessity, the paper deliberately confuses the crucial issue of aboriginal rights by ignoring their existence. Yet the substance of the proposed agreement would nevertheless extinguish all claims based on these or any other title to the 168,000 square miles of traditional Inuvialuit lands. Thus the Government's contradictory policy of refusing to define aboriginal rights unless they are extinguished is carried to an even greater plateau of deception by effectively extinguishing something the existence of which is neither confirmed nor denied.

Of the land recognized as Inuvialuit, over 97% is placed in the direct control of the Federal Government for development purposes and the remaining portion is indirectly controlled through the various management and regulatory provisions of the agreement which place in the Cabinet's hands the final say over how any particular development is to proceed and what the Inuvialuit are to receive as compensation. Despite the superficial "ownership" of the area by the Inuvialuit, their input into control and development will be advisory only.

In addition to the subordination of the Inuvialuit to an advisory role, their potential as "meaningful participants" in the economy of the North is totally undercut by the selection process. Not one acre can be chosen from lands that contain proved oil or gas resources, and it is even doubtful that the Inuvialuit will be able to retain land which subsequently proves to have such mineral wealth. To make matters worse, the primary means by which the Inuvialuit are allowed to affect development — the power to negotiate environmental and other compensatory measures in exchange for granting access rights to developers — is made totally harmless. In granting surface and sub-surface rights, the Government argues that it is enabling the Inuvialuit to set the conditions of access. How, we ask, can anyone negotiate the conditions of access if access cannot be refused? By the

---

* Native Council of Canada Statement on COPE/Government Position Paper on Inuvialuit land claim. Issued by Harry W. Daniels, President of Native Council of Canada, Ottawa, August 24, 1978.

provisions of the settlement as they now stand, the Inuvialuit will always be compensated, but to the precise degree the Government finds acceptable and no more.

In no area of economic pursuit, traditional or modern, are the Inuvialuit provided with a decisive voice. The management of hunting, fishing and trapping will remain in the Federal Government's hands through what it euphemistically calls "integrated management", and there is no protection afforded in regard to commercial exploitation by non-natives which is already in operation. Similarly, all native mineral developments will be limited in scope as a result of both the selection restrictions and those which demand consistency with traditional values. Thus the Inuvialuit are limited in their ability to adapt to changing economic conditions, and specifically prevented from constituting a serious threat to non-native and non-northern business interests.

The potential benefits of the settlement are even more dubious in regard to the social and economic development measures discussed in the paper. There is no commitment by the Government to develop employment of the Inuvialuit. All economic measures are subject to the approval annually by individual Government departments, cannot exceed departmental budgets, and will terminate in the year 2000. These conditions are regarded by the NCC as outrageous since they allow the Government to disclaim responsibility for any particular program's failure by shifting the burden of coordinating each Department's contribution to Inuvialuit negotiators. This places the Inuvialuit at the losing end of a bureaucratic shuffle which will probably result in the unnecessary depletion of compensation fund resources.

The programs suggested for social development are only a 1970's version of the old "community development" strategy which failed so miserably in the last decade. $7.5 million are to be provided for projects which, since they lack a comprehensive approach to creative development, can only react on a small scale to the major forces of change in the region.

The organizational aspects of the proposed settlement leave open many crucial questions relating to implementation. Nevertheless, the basic structure is easily characterized. Rather than furthering the Government's proclaimed goal of "decentralizing the decision-making process' it actually achieves a superficial deconcentration of administrative authority. In sum, it deals with the sub-allocation of services and little else. The important issues of dealing with the concentration of decisional power in Ottawa and Yellowknife are left for a forum over which the native influence is to be reduced to a minimum — the Drury Commission.

The ramifications of these aspects of the proposed settlement lead the N.C.C. to conclude that the entire formula is premised on the assumption that no essential conflict of interest exists, or is likely to exist, between the Government's conception of what ought to take place in the north and the needs of the native people. This idealism is both misplaced and self-serving,

since it has been the conduct of the Government in the north which has precipitated the necessity of protecting the rights of the native people. To assume that this will not continue to be the case in the future is unrealistic and dangerously supportive of the continuation of the north's colonial status as a frontier society to be exploited for the sole benefit of non-northerners. The COPE/Government joint position paper is structured to severely limit the traditional basis of activity on the part of Inuvialuit and excludes them from participation in the emerging economy by ignoring the real divergence of interest which must be recognized to inaugurate effective policy.

The Joint Position Paper

1. Land — the basis of productivity
   A. What happened to aboriginal land rights?
   B. The Inuit get less than 3% of the land they claimed in the region.
   C. Land value assessment ignores the value of offshore and sub-surface resources.
   D. The Government will manage and regulate all the land.
   E. The Inuit can select land from limited (mineral-resource free) areas.
2. Productivity and the settlement
   A. All productivity must be channelled through the Government regulatory auspices.
   B. Traditional pursuits are limited.
   C. There is no commitment by the Government to the employment of Inuit.
   D. Mineral development by Inuit is to be limited, local and "traditional".
   E. Compensation and Government consumption are token payments for the expropriation of land.
   F. Economic programs are limited by departmental budgets in Ottawa and end in the year 2000.
   G. Social development is piecemeal, deals with symptoms.
3. The Organization of the Settlement
   A. On the Land commissions, the Inuit have no safeguards.
   B. The Inuit have only advisory or recommending status in matters concerning wildlife.
   C. The political organization involves the centralization of decision-making but the decentralization of services.
   D. This leads to a contradiction in the organization of economic resources management.
4. Conclusion: the failure of Canadian policy relating to the Inuit.

1. Land — the basis of productivity.

Land is not only the locale for both traditional and non-renewable resources, but has become the focus of the conflict in the settlement.

A. What happened to aboriginal land rights?

The Government attempts to absolve itself of any responsibility for protecting aboriginal rights by asserting:

> "Nothing in this subsection or in subparagraph 3(2)(d)(ii) implies an admission by the Government that the Inuvialuit now have a property right deriving from aboriginal title." (3,3,d,iii)/p. 16.

While aboriginal claims are not totally and explicitly denied, the Government is proceeding by consultative means to deal with "constitutional" obligations. As a result, the settlement is not one in recognition of aboriginal title, but one dealing with compensation for the expropriation of land. What is to become of the concept of aboriginal title? Has a concept recognized here and in other countries simply disappeared? What are the grounds upon which the Government justifies replacing legal procedures with administrative criteria? These questions are ignored.

B. The Inuit get less than 3% of the land they claimed in the region.

A brief calculation of the distribution of land shows that the Inuit claimed 168,000 square miles as the area of traditional use. Of this, the settlement shows that they receive 5,000 square miles for residence and settlement, to be held as title, fee simple, with sub-surface rights. In addition, they receive 32,000 square miles, but in this area they do not hold sub-surface rights. It should be pointed out that this does not include the total area of the Western Arctic Region.

C. Land value assessment ignores the value of offshore and sub-surface resources.

In estimating the value of the land, assessment was based on the potential productivity of hunting and trapping in the region. The estimates were made on the market value of these activities per square mile, which were then multiplied by the total land area considered relevant. No estimate was made for offshore resources. Likewise, no estimate was made for the value of mineral resources in the region. As a result, the estimate is unrealistically low. The government does not mention these matters even though it concludes that the value of the lands is low when assessed at "fair market value". One wonders what the "fair market value" would be if these two important resources were included in the calculations. Further, one wonders what logic the Government uses in excluding these two important resources in calculating the value of the land.

D. The Government will manage and regulate all the land.

The Government maintains complete management and regulatory power over these lands, in both specific and general terms.

In general terms, the matter of any further expropriation would involve exchange for lands if "at all reasonably possible" (3,3,b). Nevertheless such a decision is made only through an Order-in-Council and not in any way that is adversarial.

The lands of the Inuit are subject to the laws of general application of the federal and territorial governments. No guarantee of Inuit interests exist other than the statement that amendments would be made "where appropriate" (3,2,b). Appropriate to whom and in what way is left for the imagination!

The Government would manage all aspects relating to minerals (3,2,c).

In more specific terms, the Government proposes management through two bodies — a Land Planning Commission and a Land Use Application and Review Committee. The organizational aspects of this will be discussed later, but it is important to note here that both of these are *advisory bodies only.*

In the Husky Lake area #2, applications are subject to approval of both the Inuit and the Government. But this apparent check is reversed with the provision that if an application is rejected the applicant may appeal to the Minister (8,4).

Another specific feature of Inuit land concerns access. All lands are subject to Territorial Land Use regulations and the Federal Government assures access to Inuit lands on the following terms:

1) public access will be guaranteed on all Inuit lands 100 feet from bodies of water (3,7,a, i & ii).
2) Inuit lands are subject to access when associated with development projects (3,7,g).
3) Any activity by holders of existing rights and future rights shall be guaranteed access across and upon Inuit lands (subject to negotiated compensation) (7,1).

The Inuit and the Government will negotiate access for fishing rights on Bathurst Island. Inuit engaging in allowed commercial harvest of wildlife will be allowed restricted entry. In sum, no mechanisms exist by which Inuit may control or restrict access — this is retained entirely in the auspices of the Government.

In sum, all management of land rests within the sphere of the Federal or Territorial governments with no more than advisory input from the Inuit. Amendments in the interest of the Inuit would only be made "where appropriate" and no mechanisms to support the Inuit where a genuine conflict of interest exists have been specified.

E. The Inuit can select land from limited (mineral-resource free) areas.

A final aspect of the settlement regards the selection of land by the Inuit, 37,000 square miles are to be selected from over 168,000 claimed in the region. In selecting these lands, several criteria have been set forth:

1) the land must have importance for traditional pursuits;
2) it must have importance for tourism or other economic opportunities;
3) it may be selected because of historical significance;
4) it may be used to create new Inuit communities;
5) it must be chosen from "lands that do not contain proved oil or gas reserves";
6) these may not be lands that are public works or privately owned.

While some provision for mineral development is made in the settlement (to be discussed later), criteria #5 excludes the Inuit from pursuing seriously certain mixed strategies of development.

2. Productivity and the settlement.

A. Productivity mediated through Government auspices.

The authors of the paper have approached the settlement as a matter of constructing a policy in the rationalistic mode. The procedure involves identifying a set of basic goals and objectives and the means by which to achieve them. Implicit within the exercise is the assumption that these various resources are to be treated as commodities. In the previous section we examined the way in which land — the most general resource — was so treated. In this section five basic kinds of productivity — or economic activity — are analyzed. In each of the cases it becomes clear that the Government retains itself as the channel through which Inuit productivity proceeds.

In most general terms, the Government identifies this channeling as one of its major objectives:

> "One fundamental objective of the Government and the Inuvialuit is to enable the Inuvialuit to be equal and meaningful participants in the northern and national economy and society." (12,1)/p.63.

It is "participation" which defines the manner in which Inuit productive activities are to be guided. The productivity is not intended to enhance self-sufficiency or absorption. It is the mediate form of relation with the state in which the Inuit "participate" that is the basic objective. It is helpful then, to summarize what this means by taking the five major sources of economic activity and showing how they are related to the larger economy. This then makes the meaning of "participation" more concrete. Figure I summarizes these types of economic activity and the type of relation to the larger economy as mediated by the Government.

Figure I

Inuit Productive Activity and Type of Relation to Economy

Type of economic/productive activity	Type of relation to larger economy as mediated by Government
Traditional wildlife	"integrated management"
Employment for wages	"reasonable hiring"
Mineral development	limited/local/traditional development
Compensation funds/ Purchase of products	"fair market value"
Economic programs	"would not exceed projected budgeted levels"

B. Traditional pursuits are limited and cannot limit other activities.

With regard to traditional pursuits, the Inuit have rights to harvest fur-bearers; bears and musk-ox in the region; exclusive right to harvest game in Inuit lands; and preferential rights to all other species (except birds) in the region. (10, 1&2). The management process will rest with the Government (with advisory input from local hunters) and will include setting of subsistence quotas, restrictions arising from international agreements and other matters consistent with protection, public safety, efficient utilization and the environment. (10, 2&3). Existing licenses held by non-Inuit will remain in force. The Government will attempt to bring greater flexibility in the International agreement regarding wildlife where it affects the Inuit.

In sum, the Inuit have preferential and exclusive use to existing wildlife resources with only a minor advisory role in management and regulation. Population pressure, subjection to mineral exploration and exploitation as well as the continuation of non-Inuit wildlife activity can only force the Inuit into a situation of increased scarcity. With such minimal input into management and regulation, what recourse do they realistically have to maintain or alter the traditional strategies which are so essential to their social organization.

With regard to fishing, the Inuit own the beds of bodies of water which are not navigable (3,7,c). However, the Government owns all the water. It manages fish in all bodies of water which are navigable. It manages and controls water and "adjacent lands" related to community water supplies. The Inuit do not own the fish, nor do they have exclusive right to harvest

fish (3,7, f&g). However, a public right for use must be negotiated. Finally, in order to assure its management, the Government stipulates that: "The Inuvialuit shall not impede or interfere with the Government's right to manage the fish, birds and their habitat . . . (or with) the Government's carrying out governmental functions." (3,7,e, i&ii). The management of wildlife activities is thus to be "integrated" into the use of other resources in the region.

C. There is no commitment by the Government to employ Inuit.

Employment is a further area from which Inuit strategies for economic activity will proceed. The Government suggests several areas for opportunity, but in no way approaches a serious commitment to the Inuit:

1) "The Government agrees to take the measures it considers reasonable to establish Inuvialuit priority with respect to employment . . . "(p.69)

2) "With respect to Crown lands . . . general guidelines to facilitate employment . . . shall be considered and applied so far as possible by the Government with respect to each application." (p.43)

These are simply rhetorical and ambiguous statements which carry no authorization for employment as an economic strategy.

D. Mineral development by the Inuit is to be limited, local and "traditional".

The Government will grant 10 prospecting permits and 25 mining claims under the following conditions:

a) they are "without prejudice to existing rights to third parties";

b) they are "serious efforts";

c) they are "consistent with Inuvialuit values . . . (and) without significant financial outlays";

d) royalties from not more than 20 of these permits will be paid to the Inuivialuit Mineral Fund and this only until the year 2000. (12, 6, a,b, & e)

In addition, "local use coal permits" will be granted free of royalties or other charges. The extent then, to which the Inuit can pursue mineral development is extremely limited. Note that the Inuit are excluded from developmental (mineral) strategies based on royalties; claiming lands with proven resources, or undertaking significant projects! This is the preservation of traditional pursuits with a vengeance.

E. Compensation and Government consumption are token payments for the expropriation of land.

The Government consistently notes that a basis for the compensation is somewhat like that given when land has been expropriated. Both the compensation and the purchase of products yield income for the Inuit.

A major objective is that the Inuit manage funds derived from compensation (12,1,b). The Government acts as a trustee of these funds and deposits them in Inuit corporations for their management. The $45 million settlement will be held by the Government and disbursed between the years 1981 and 1994 at 8% (simple?) interest. The first payment will be $10 million and will be followed by payments of $3 million (1982-1984); $20 million (1985-1989); and $85 million (1990-1994). In the interim period, the Government will make interest free loans every six months totalling $9.6 million. Any additional loans are limited to the balance remaining due from the Government and will accrue at rates of 8% compounded semi-annually.

While the sum received as compensation is not taxable, all funds gained as a result are subject to taxation.

The Inuit funds will be managed through the Inuit Development Corporation and the Inuit Investment Corporation in ways that are not specified.

While many of the technical details are not available, at least two points should be made here. It is not clear that all things considered (the variety of interests on compensation and loans/ the financing of economic programs) whether it might be advantageous for the Inuit to hold the sum to use in a different manner. Second, this plan in no way involves sharing the wealth of the region in which Inuit development could be said to involve serious participation. A flat fee disbursed over time is not comparable in our opinion to a form of royalty.

In the North, as throughout Canada, the Government is a major consumer. Its activities in this regard are crucial in the economic fate of many regions of the country. The Government commitment is again ambiguous. It agrees:

> "to take reasonable measures to buy resources and products derived from Inuvialuit lands and communities for their fair market value from time to time to meet its own requirements." (12,4,a)/p. 68.

While few can object to the principle of "fair market value" as a criteria for determining prices, it should be noted that 1) the Government is selective in when it will and will not employ that criteria (consider assessing the land); and 2) the impact of the fair market value on the Inuit is not the same as it is to the Government. In any case, we would argue that there is ample ambiguity here that the Inuit basically have no firm statement on which they can make the Government accountable.

F. Economic programs are limited by departmental budgets and will end in the year 2000.

Another major impact on Inuit productivity will come from Government programs. A wide range of options are to be specified in the Final Agreement, making it difficult to deal with concrete items here. Yet,

the major objective is one of closer integration of Inuit activity with those of the region, despite the ambiguous commitment on employment and purchase of goods and the exclusionary nature of mineral development.

The Government seriously limits its commitment to economic programs. The Government states it will make no contribution beyond those in the final agreement (12,1). Further the agreements for any economic programs will not be extended beyond the year 2000 (12,5,c). This is keeping with the position that through this contractual settlement, little more than expropriation of lands is taking place. Notice that no provision is even mentioned for how renewal or non-renewal of programs would be handled in the year 2000. All that is offered is the oft-repeated alternative: Inuit may have what they are eligible to receive as Canadian citizens.

Further, the process by which the Inuit contribute to the formation of these programs involves the important notion that *the programs themselves* are to be negotiated. If specific economic measures are important, why should this be decided in the negotiating (or adversarial) context? General terms may be negotiable, but why should content of programs be? To detach content of programs from the negotiation is a problem only made more intense by the fact that the Inuit input is limited. The Inuit are to: *identify goals; advise* on needs; *evaluate* economic opportunities (12,1,c,i). Further into the process, an economic working group will recommend measures to negotiators. And a review committee will *monitor* implementation, *analyze* Inuit performance and *advise* the Government as necessary (12,1,c,ii). While checks in the process are helpful, the process has become heavily bureaucratized and subject to negotiation. The prospects for participation are dim.

A final aspect of the Government commitment on programs is that they shall not exceed budget levels (12,1,b, ii). This means that the mandate will require consistent efforts by Inuit (annually?) to see that every department which may be involved secures the budget. Are the Inuit expected to carry these costs from their funds from compensation? The matter is not minor. Rea has pointed out that the expenses associated with service activities are rising at an excessive rate. This would only detract from what limited activity there will be.

G. Social development is piecemeal, and deals only with symptoms.

A related area is that of the social development measures and it illustrates once again the fundamental difficulties in the settlement.

The objectives stated are to provide equality of opportunity, while preserving the traditional culture and lifestyle within a changing society. Using these cliches is like exhorting a worker to keep his shoulder to the wheel, his eye on the ball, his nose to the ground and then expecting him to work in that position.

More important, the programs suggested here for social development are only a 1970's version of the old "community development" strategy which failed so miserably in the last decade. Seven and one-half million dollars are to be provided for projects which are either pilot projects, research, review/evaluation or for special needs. While each of these does have importance, there is no statement regarding social development in a comprehensive sense. Small projects, community-based, can only react to the significant forces of change in the region. Hence, they are no more than band-aids (perhaps tourniquets). While traditional practices and community orientations are important in social programs, how can they possibly affect the vast agencies and enterprises engaged in large-scale activity? We have already shown that in case after case the Inuit have no mechanisms to restrain or control in situations where their interests are contravened. The Government has simply written no basis for Inuit involvement or autonomy in the very area of its own raison d'etre — authority. There is no authority attached to the interests and concerns of the Inuit where they may conflict with those of the large-scale non-renewable resource exploiters.

3. **The Organization of the Settlement.**

In terms of the settlement, the goals and objectives (the content) are significant matters for analysis. Yet it is through the actual organization that the impact will be felt. In this settlement, the actual organization represents a few recent fashionable trends, but basically the power is concentrated in the hands of the Government. The organization (or structural) facts of the settlement are that the Inuit have almost no power to manage or seriously affect the forces which are about to engulf them. They only retain the ability to recommend or advise.

A. On the Land commissions, the Inuit have no safeguards.

Membership on the Land Use Planning Commission results from the Inuit nominating 2 persons, the federal and territorial governments nominating 1 each and a fifth person nominated by the Minister, who makes the actual appointments. In any case the Commission has only advisory/recommending powers to the Minister. The Land Use Application review committee likewise includes representatives from the federal and territorial governments and the Inuit as well as the previous commission. Its powers are advisory as well.

B. The Inuit have only advisory status in matters concerning wildlife.

Although the details remain to be worked out in the final agreement on this matter, the basic organizational structure has been set. Several bodies will be set to deal with matters relating to wildlife. The Game Council and Hunting/Trapping committees will be comprised of Inuit. The Natural

Resources Research Board will include both Inuit and governmental authorities. Each of these will only have powers described variously as advisory or consultative, with some powers to hold hearings or make recommendations.

C. The political organization involves the centralization of decision-making, but the decentralization of services.

The nature of political organization is a contentious one as the joint paper itself concedes. The Government allows for no possible concession from its own position. It says it will consider the matter of political representation further with the Inuit.

Any other response would be incongruent with Government policy since the Drury Commission itself represents concentration of decision-making from deep within the Cabinet and Privy Council.

When the Government holds that decentralization is important, they make the point in the following terms:

> "The Government . . . shares the view of the Inuvialuit that the people of the region and the communities should have greater control over certain matters, such as education, game management, health services, economic development and police services (recall the specifics in the previous sections, FKH) vital to the people . . . " (14,3)/p.79.

As has been seen and will be shown further, the Government has in no way decentralized decision-making. It has only decentralized the delivery of services. The distinction is crucial. Social services, economic programs, wildlife management, economic development may all be organized in such a manner that they are decentralized. But this in no way deals with the balance of power on committees, the control of budgets, or the control of the regulatory framework — which lies within the aegis of the Government. In fact, it simply begs the crucial question: how *can* one organize in such a manner to make decentralized decision-making a dynamic, authoritative and relevant mode in the Western political economy? This paper simply shows that its authors are not prepared to deal with this matter. As a result, the crucial problem of settlement has been swept aside. As a related example, consider the actual physical layout likely in the Inuit residence settlements. The Government area will be in the centre with major services and facilities. Leading away from them will be corridors related to water management and other public services. The Inuit are subject to regulations regarding public access and they cannot appeal to a single provision in this paper with which to stall or address actions which are contrary to their interests.

D. This leads to a contradiction in the organization of economic resources management.

This contradiction becomes clearest in terms of the various economic resources. The Government holds the compensation funds for disbursement

on an agreed-upon timetable. And here the Inuit are left to their own devices. No economic programs other than those in training for management are suggested. The Inuit are to become a corporate entity — ethnic stockholders — if you will. Their future requires living out this corporatist mode within the vacuum which emphasizes community and basically excludes them from significant participation in the economic order. Just what economic clout their activity may bring is not clear to us, but the structure is: fractionalization can be the only result given all the other forces that are operating.

The Inuit will find the economic programs of marginal assistance at best. It has been noted that these programs are limited in a number of respects: departmental budgets, time, and they are to be basically "innovative" or deal with special problems. Without provisions for economic participation in a significant sense, the compensation funds will be used just to "catch up" with the forces which lead to their economic dislocation.

4. Conclusion: the failure of Canadian policy relating to the Inuit.

We began with the assertion that the settlement deprives the Inuit of any ability to resist successfully whenever a conflict of interest does occur. It seems obvious that some conflicts do exist in the situation and the settlement as proposed in the joint position paper has not anticipated them or developed mechanisms to support the Inuit in such conflicts.

While that point may have been petty to those who cannot conceive of the world in such terms, the concluding one will be downright irreverent. In proclaiming support for the "traditional" world of the Inuit, and a community-centred plan, they have backed themselves into the corner by not providing mechanisms which will keep those factors from engulfment. The small cannot be preserved in the face of the powerful unless some organization with authority and scope is developed. And this is what has not occurred. They have decentralized operations, but not power. And all the rhetoric in the world will not prevail against it. Every small businessman or local resident in Canada knows and has experienced the futility of this approach by policy-makers.

The argument is not that the details are incomplete, but that the die has been cast — at least with the proposal in the present form. The structure of the settlement severely limits the traditional basis of activity on the part of Inuit; it excludes them from participation in the emerging economy specifically, and through its ambiguity and neglect. In addition, the strategies — the mixes of daily living options — the Inuit have are severely limited.

But the failure is not so much one of intention as of sound policy formation. Canadian policy-makers have not been successful in these matters for years. It represents over a century of Canadian policy failure. In sum the contemporary native policy makers with an arsenal of technocratic and

political tools at their disposal have only re-discovered the indirect colonialism used in Third World countries so long ago. Admittedly this scheme has sophisticated and fashionable dressing — even the appearance of a good military scanning. But, in substance, results will probably lead us to look back at it and say that it is little more than a blueprint for internment.

Towards Co-equality: Integration vs Assimilation

RIGHTS OF HISTORIC NATIONAL MINORITIES*

The Native Council of Canada represents the Metis and Indian people not recognized by the Indian Act. This brief is aimed at clarifying some of the issues raised by the Prime Minister's statement, "A Time For Action", and by the Bill to amend the Constitution. We believe that both documents are ambiguous and misleading on questions related to our special rights as partners in Confederation and the relationship we bear to Canadian society.

These documents assume we are part of Canadian society, that we are like ethnic or immigrant minorities. They also assume our often impoverished conditions are simply a result of a lack of access to equality of opportunity to advance in the social class system of the dominant society in the manner expected of recent immigrants. Clearly these are assimilationist sentiments, though noble in intent.

The implication underlying these assumptions is that we require special human rights legislation to overcome impediments to our advancement within Canadian society, that is, protection against discrimination as though our impoverished economic circumstances were solely due to discrimination.

Equality of opportunity is the antithesis of special status rights and discussion of it obscures, rather than clarifies the rights guaranteed us by the Royal Proclamation of 1763, and since 1867, by the Manitoba Act, The Dominion Lands Act, The Halfbreed Lands Act as well as the B.N.A. Act itself.

We are an historical national minority with rights inherent in that status which go beyond the right to equality of opportunity. The latter right

* A brief presented by Harry W. Daniels, President of the Native Council of Canada to the First Ministers' Conference on the Constitution, Ottawa, October 30-November 1, 1978.

page 46 blank.

assumes that we be assimilated into either French or English versions of Canadian society. As a historical national minority we have the right to remain separate and distinct from both versions and develop along lines dictated by our own cultural aspirations. The question for us therefore, is not the vague, charitable one of gaining access to "equality of opportunity" in "the Canadian mosiac", but more correctly, how to relate to Canadian society without losing our identity, lands and those rights inherent in our aboriginal status in the process.

It seems to us that this Bill deliberately side steps the special status position of native people and offers a vague humanitarianism instead.

No other minority in Canada can say that it has a greater right to self-determination than we. We decided not to exercise this right in full when we brought Manitoba into Confederation in 1870. We believed in Confederation then and actively resisted annexation of the West to the United States. We thought Confederation would allow us to develop and prosper as a distinct people, as a partner in Confederation. History shows that our hopes were not fulfilled. Instead we have become "squatters in our own land", a people whose land and political rights were soon ignored by both our English and French partners after 1885.

Equality of opportunity is a noble phrase but should not serve as a substitute for a clear, unambiguous statement of how our rights are to be realized and guaranteed in any new Constitution.

We notice that French and English language rights are singled out for guarantee and are given detailed consideration. The context in which they are proposed, we also note, makes no reference to promises of "equality of opportunity". What are we to understand from this? That our rights are subordinate to those of the French and English? That our plight is merely a question of social and economic betterment? Our future simply a question of charitable treatment by non-natives?

If the answer is yes to all of these, then we can only assume that our present problems and predicaments are being interpreted as emanating from past failures of attempts to assimilate us into either French or English versions of Canadian society, that we are viewed as being simply other "ethnics" to be dealt with through the vague provisions of multicultural policies.

With regard to the latter policies, we repeat, we are not just another cultural group, but an historical national minority, that is, a people with a right to stay in Confederation or get out of it. Ethnic groups do not have this right. They are not historical national minorities and do require measures to guarantee access to equality of opportunity. We need more than this.

We must emphasize that we have no objections to any new Constitution containing a charter of human rights and freedoms. What we object to is using it to deal with our rights which we believe should be dealt with

separately in the same manner as are the proposed language rights, that is as one of the "fundamental objectives of the Canadian federation".

A quick glance at the Bill reveals that our unstated rights are subsumed under vague provisions or engulfed in libertarian rhetoric, a rhetoric which does not state clearly whether Metis and Indians outside the Indian Act are even to be accorded the recognition now given status Indians.

For example, on page 8 of "A Time For Action", a caption reads "Full respect for native rights" and the second paragraph then goes on to talk about Indian and Inuit peoples. What is meant by the term Indian here? Is he the Indian referred to in the B.N.A. Act or the one defined in the Indian Act? The two are not the same.

The final two paragraphs, without attempting clarification, blithely proceed to make the assimilationist assumption that the place of native people is "within Canadian society". We suggest most emphatically that the place of native people is certainly within Confederation which is a reality however threatened and not in some abstraction called "Canadian society". Native people, it must be repeated, have a co-existential right within Confederation which makes us "special", not equal to other Canadians.

We believe that among other things, this right must be clearly spelled out in the new Constitution to avoid any confusion. We realize that governments over the years have been reluctant to specify these rights for Metis and Indians not covered by the Indian Act, but we believe further procrastination weakens, not strengthens, our bond to Confederation.

There are basically three options opened to us concerning how we should relate to your society. The first is to accept assimilation as being inevitable and become full participants in your society, thereby foresaking our history and distinctive identity. The second is to exercise our right of self-determination and establish ourselves as a separate political entity in Canada. The third is to work out a political formula whereby we become integrated into your society but with guarantees which allow us to retain our identity as distinctive, historical national minorities. We favour the third. However, we do not believe this can be accomplished through multi-culturalism. It can only be accomplished through opportunities for us to represent ourselves in legislatures.

What we are seeking and what we have always sought is a guarantee of a fixed number of seats for natives in both federal and provincial legislative assemblies. As the matter now stands, native people have little or no opportunity to make their views known in these assemblies.

We therefore urge that it be a matter of prime importance to fulfill the promises made to us in 1870 that a political formula guaranteeing seats in the assemblies mentioned, including a reconstituted Senate, be considered and approved by this Conference.

We also urge that leaders of native organizations be included in any further discussions of Constitutional reform to discuss, among other

things, the details of our rights and the form which our political representation should take.

In addition, we believe that Canadian identity must be rooted in its aboriginal heritage. Successive governments have not seen fit to recognize a Canadian identity and culture which is rooted in this land. It is evident from the two policies of bilingualism and multi-culturalism that the federal government still propagates the "two-founding nations" myth while granting cultural concessions to "ethnic" groups.

The official conception of multi-culturalism presents Canada as a country where people from all over the world and the English and French charter groups co-exist in a spirit of mutual respect for each other's culture. However, there is no recognition of a distinctive Canadian culture. Is that because the federal government still believes that those who see their roots in this land are inferior?

Can any other group in Canada say, as the Metis can, that they combine ancestry of the first inhabitants of this country with nearly every other racial group in the world? It is only natural for us to proudly state that "Native nationalism is Canadian nationalism".

THE METIS AND MULTICULTURALISM*

It should be stressed that while the Metis political leadership must vigorously oppose the federal government's policy of multiculturalism which relegates a native and national minority such as the Metis to ethnic status within the so-called Canadian mosaic, the Metis are not opposed to multiculturalism in principle. In fact the Metis are pioneers of multiculturalism!

One only has to read the history of western Canada to recognize the contributions of the Metis to the multicultural ethic. It was the Metis provisional government of 1869 headed by Louis Riel which negotiated Manitoba's entry into Confederation on terms designed to protect French and English as official languages. It was Louis Riel, championing the cause of the Saskatchewan Metis in 1885, who insisted that the Metis desired possession of only 1/7 of the west with the remainder to be distributed to all the oppressed people of the world such as the Jews, Ukranians, Italians, and the Irish.

By our very origins, the Metis personify multiculturalism. Originally the mixed offspring of French or Scottish fur traders who married Indian women, the Metis have gone on to absorb the mixed offspring of native Canadians with people from all over the world. Traditional Metis culture stems from the welding together of European and Indian cultures and the Red River Jig, Fiddle Music, and other manifestations of Metis cultural expression continue to this day to typify what can best be described as a truly Canadian culture. It is for these reasons that we can proudly state: "Metis nationalism is Canadian nationalism".

However, we believe that the official policy of multiculturalism suppresses the aspirations and hopes of Metis people. It continues to feed us the "two-founding nations" myth while tossing in some Ukranian easter eggs, Italian grapes, or Metis bannock for some extra flavor. It ignores the fact that the Metis are the only charter group in Canada with a history of national political independence before joining Confederation. Nor does it account for the belief of Metis and Indian people that our aboriginal identity and heritage constitute a special claim on the state. It implies that different ethnic groups should co-exist with mutual respect within the mainstream of society while ignoring the fact that Metis are a national and indigenous people, not an ethnic group, largely outside of the mainstream of society.

It is unfortunate that the technocratic conception of multiculturalism has crept into the federal government's socio-economic programming for Metis and non-status Indians because it assumes that as our people move into urban areas we are to start at the bottom of the ladder, like immigrants just off the boat, and move our way up. In spite of our belief that we are a

---

* A brief presented by Harry W. Daniels, President of the Native Council of Canada to the Third Canadian Conference on Multiculturalism, Ottawa, October 27-29, 1978.

founding nation and should have a special relationship with the federal government so that we can bring about the collective integration of our people into Canadian society, we have to deal with government departments like multiculturalism which merely offer to buy advertisement space in ethnic newspapers. Culture cannot be preserved in a jar and if the federal government is serious about multiculturalism in Canada, it must seriously come to grips with the nature of the single nation concept it has so vigorously defended in the past.

It is interesting to note that in the first decades of the nineteenth century, Metis in the frontier areas of Canada and the U.S. were known as the "Canadiens", a term which distinguished us from those who still regarded themselves as Europeans. In fact, this identification of Canadians with European or other foreign cultures persists to this day and is reflected in the policy of multiculturalism. The vast majority of Canadians are still not willing to recognize that Canadian identity is inseparable from its aboriginal heritage. If and when this discovery does take place, the Metis will no longer have to struggle to implant their Canadian reality in the minds of the inhabitants of this country. Until that time comes, we are only asking this country to accord a special recognition to the contributions and needs of a people who are the quintessence of what was, what is, and what will always be, Canadian.

THE NEED FOR A FOUNDING NATIONS CONFERENCE*

"Canadian identity is inseparable from its native identity and this aboriginal heritage must be taken into account in the national unity and constitutional reform debates presently taking place", says Harry Daniels, President of the Native Council of Canada which represents Canada's one million Metis and Non-Status Indians.

"There can be no distinct Canadian culture nor can there be real national unity until Canadians accept their aboriginal heritage. There is no other group in Canada which better represents the fusion of the Old World and the New as the Metis of Canada."

Mr. Daniels stated that the Metis, as mixed offspring of the native people of Canada and all the people of the world, genuinely represent the Canadian mosaic. "The Metis must be brought into any renegotiation of the constitution if there is to be a realistic solution to the Canadian national unity problem. Metis nationalism is Canadian nationalism."

Daniels has called for a Founding Nations Conference of anglophones, francophones, Metis and other native people which should be held before any further discussions take place on questions of constitutional reform.

Mr. Daniels expressed surprise at the narrowness of Rene Levesque's recent comparison of the issues facing Quebecois and those historically faced by the Metis people.

"The basic political, cultural and economic rights which the Metis sought to secure in joining Confederation in 1870 are now once again being ignored by a provincial government which ironically is seeking similar guarantees for the Quebecois. The Metis fact, not the francophone or anglophone, represents the true basis of Canadian culture. As historians know, the Red River Metis community was the embryo of a burgeoning Canadian identity, but this identity was suppressed and denied by the federal government in Ottawa which looked to England and France for its notions of culture and thus blatantly violated the terms of the agreement by which Louis Riel's Metis Provisional Government negotiated Manitoba's entry into Confederation.

Since then it has been the British and French notion of culture and not a distinctly Canadian one which has dominated Canada. Mexico did not go this route and, as we all know, developed a vibrant culture and a strong national community. It is no wonder that Canadian unity and national identity are in a crisis. Canadians have never recognized that their culture is rooted in the native tradition", says Daniels.

Mr. Daniels asks of the Premier of Quebec: "How can anyone demand recognition of Quebecois rights without recognizing the rights of the Metis, Indians and Inuit of Canada? Otherwise, Francophone and Anglophone demands are hypocritical . . ."

---

* Le Devoir, August 21, 1978, p. 3.

DECLARATION OF RIGHTS*

NATIVE COUNCIL OF CANADA — 1979

WE THE METIS AND NON-STATUS INDIANS, DESCENDANTS OF THE "ORIGINAL PEOPLE" OF THIS COUNTRY DECLARE:

THAT METIS NATIONALISM IS CANADIAN NATIONALISM. WE EMBODY THE TRUE SPIRIT OF CANADA AND ARE THE SOURCE OF CANADIAN IDENTITY.

THAT WE HAVE THE RIGHT TO SELF-DETERMINATION AND SHALL CONTINUE — IN THE TRADITION OF LOUIS RIEL — TO EXPRESS THIS RIGHT AS EQUAL PARTNERS IN CONFEDERATION.

THAT ALL NATIVE PEOPLE MUST BE INCLUDED IN EACH STEP OF THE PROCESS LEADING TO CHANGES IN THE CONSTITUTION OF CANADA.

THAT WE HAVE THE RIGHT TO GUARANTEED REPRESENTATION IN *ALL* LEGISLATIVE ASSEMBLIES.

THAT WE HAVE THE INALIENABLE RIGHT TO THE LAND AND THE NATURAL RESOURCES OF THAT LAND.

THAT WE HAVE THE RIGHT TO DETERMINE HOW AND WHEN THE LAND AND RESOURCES ARE TO BE DEVELOPED FOR THE BENEFIT OF OUR PEOPLE AND IN PARTNERSHIP WITH OTHER CANADIANS FOR THE BENEFIT OF CANADA AS A WHOLE.

THAT WE HAVE THE RIGHT TO PRESERVE OUR IDENTITY AND TO FLOURISH AS A DISTINCT PEOPLE WITH A RICH CULTURAL HERITAGE.

THAT WE HAVE THE RIGHT TO EDUCATE OUR CHILDREN IN OUR NATIVE LANGUAGES, CUSTOMS, BELIEFS, MUSIC AND OTHER ART FORMS.

THAT WE ARE A PEOPLE WITH A RIGHT TO SPECIAL STATUS IN CONFEDERATION.

---

* Approved by the NCC Board of Directors and Presented to the Joint Cabinet — NCC Committee meeting, March 19, 1979.

ABOUT THE AUTHOR

Harry W. Daniels is President of the Native Council of Canada, the national association of the one million Metis and non-status Indians of Canada. Born in Regina Beach, Sask, in 1940, he has dedicated over ten years of his life serving Native people as an articulate spokesman on the fundamental issues of native rights and social and economic advancement.

He was first elected to the office of President in July 1976 and was re-elected for a two-year term in June 1977. Prior to his election as N.C.C. leader, he was Director of Aboriginal Rights Research for and special assistant to the President of the Metis Association of Alberta in 1976; Secretary-Treasurer of the NCC during 1974-75; and Vice-President of the Metis Association of Alberta in 1972.

In addition, Mr. Daniels has represented Metis and non-status Indians at various international conferences such as the U.N. Conference on the Environment held in Sweden in 1972 and the "Habitat" Conference in Vancouver in 1975. He is presently a North American Board Member for the World Council of Indigenous Peoples.

Aside from his active involvement in Native issues, Mr. Daniels studied acting with such theatrical groups as the Manitoba Theatre Centre Studio and Dora Mavor Moore's New Play Society in Toronto. He has acted in several award-winning plays on the stage, television and radio. As well, he studied social sciences at the University of Sask. in the late 1960's.

Mr. Daniels resides in Ottawa with his wife, Lynda, and their three children.